

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

VERSUS

CIVIL ACTION NO. 1:92CV344-S-D

PARCEL OF REAL PROPERTY CONTAINING
1.6 ACRES, MORE OR LESS, IN THE
NORTHEAST QUARTER OF THE NORTHEAST
QUARTER OF SECTION 3, TOWNSHIP 15
NORTH, RANGE 13 EAST, WINSTON COUNTY,
MISSISSIPPI,

DEFENDANT.

MEMORANDUM OPINION DENYING DEFENDANT'S
MOTION FOR APPOINTMENT OF COUNSEL

This cause of action is before the court on the motion of the defendant, Chester Edwards, for appointment of an attorney for the purpose of conducting the pending appeal of this matter before the United States Court of Appeal for the Fifth Circuit. Chester Edwards and his wife, Rita Edwards, are partial owners of the 1.6 acres of land which was the subject of this in rem forfeiture action. As part of a plea bargain agreement reached between the United States of America and defendant Chester a/k/a "Chet" Edwards in Criminal Case Number 1:93CR008-B, Chester Edwards agreed to pay \$12,000.00 to be deposited in the Assets Forfeiture Fund of the United States Department of Justice to be delivered at or before sentencing. This was a settlement and compromise of the forfeiture proceeding, sub judice. This cause of action was dismissed by the undersigned by an agreed order of dismissal, pursuant to 41(a)(2) Fed. R. Civ. P., on October 17, 1994. The Honorable James Mayo

represented Chester Edwards in this civil action and for his criminal charges. His attorney signed the agreed order of dismissal. The 1.6 acres of land was not condemned. Chester Edwards did pay \$12,000.00 prior to sentencing, seemingly for final settlement of this civil action.

This court received a letter inquiry from Chester Edward pertaining to a notice of appeal he allegedly mailed for this civil action, but which the court never filed. The court order the clerk of the court to file his notice of appeal.

Unless there are "exceptional circumstances," a district court is not required to appoint counsel to represent indigent plaintiffs in a civil action. Branch v. Cole, 686 F.2d 264, 266 (5th Cir. 1982); see also, Feist v. Jefferson County Commissioners Court, 778 F.2d 250, 253 (5th Cir.1985). The Fifth Circuit in Ulmer v. Chancellor, 691 F.2d 209 (5th Cir.1982) identified four factors to be considered in ruling on requests for appointment of counsel:

- (1) The type and complexity of the case;
- (2) Whether the indigent is capable of adequately presenting his case;
- (3) Whether the indigent is in a position to adequately investigate the case; and
- (4) whether the evidence will consist in large part of conflicting testimony so as to require skill in the presentation of evidence and in cross-examination of witnesses.

Id. at 212-13; see also, Jackson v. Dallas Police Dept., 811 F.2d 260, 262 (5th Cir.1986).

In considering an application for appointment of counsel, the court will review the merits of the claim, the applicant's efforts

and financial ability to retain counsel. Great weight is given to the effort made by an applicant in obtaining counsel. See Application of Miller, 427 F.Supp. 896 (W.D.Tex. 1977). The court should also consider whether the appointment of counsel would be a "service" to the defendant and the court as well as the plaintiff, since representation by counsel may sharpen the presentation of the issues, shorten the trial, and assist the court in reaching a just determination. Ulmer, 691 F.2d at 213. As directed by the Fifth Circuit in Jackson, 811 F.2d at 262, this court should make specific findings on each of the Ulmer factors rather than deciding the motion in a conclusory manner.

First, this is a civil forfeiture case which was settle as part of a plea bargain. This court is not sure what is being appealed. The court does finds the matter to be confusing, but not complex. Second, the court has handled several of Chester Edwards motion and believes he is quite capable of articulating his grounds of appeal to the Fifth Circuit. Third, since the appeal is on the District Court record, no investigation will be necessary. Fourth, this appeal has no conflicting testimony that the court is aware of and does not require any extraordinary skill to present to the Fifth Circuit. The defendant was granted in forma pauperis status by Honorable Judge Biggers for the appeal of guilty plea in criminal case No. 1:93CR008-B. Nothing has been presented to the court to indicate that he has sought any attorneys to represent him on his civil appeal. The court does not see how an attorney would

make Mr. Edwards appeal any clearer.

Accordingly, the motion of Chester Edwards for appointment of counsel to conduct his pending appeal is not well taken and should be denied.

This the _____ day of February, 1995.

CHIEF JUDGE